

FREQUENTLY ASKED QUESTIONS ABOUT UNEMPLOYMENT INSURANCE APPEALS

Here are answers to some frequently asked questions about appeals of decisions made by the Department of Employment Services (“DOES”) about unemployment compensation benefits. This information is provided by the Office of Administrative Hearings (“OAH”) as a convenience to the public and is not intended as legal advice. Access to free legal advice for employers and for claimants is described below.

OAH handles appeals from DOES Claims Examiner’s Determinations. The primary office is located at:

**OFFICE OF ADMINISTRATIVE HEARINGS
941 NORTH CAPITOL STREET, NE
SUITE 9100
WASHINGTON, DC 20002
TEL: 202-442-8167
FAX: 202-442-9451**

HOW DO I APPEAL?

There are three ways to file an appeal (also called a hearing request). You may **NOT** file at a DOES office.

- **In person:** You may come to the OAH office listed above and fill out a hearing request form in person. Business hours are 9:00 a.m. to 5:00 p.m., Monday through Friday. You may not file a hearing request after the office is closed. A hearing request submitted in person is considered “filed” when it is given to a clerk during business hours. You will be given a copy of your hearing request stamped with the day and time received.
- **By mail:** You may mail a hearing request to OAH, using the address shown above. A hearing request mailed to OAH is “filed” on the date that it is actually received by OAH. If a legible United States Postal Service postmark appears on the envelope, however, the postmark will be considered in deciding whether you met the filing deadline. However, a private postmark will not be considered.
- **By fax:** You may fax a hearing request to OAH at 202-442-9451. A fax that is incomplete or illegible will not be accepted for filing, unless a legible copy is provided within three business days. You may confirm the receipt of a fax by contacting the clerk’s office at the above telephone number. A hearing request sent by fax is “filed” when a complete and legible copy is actually received by OAH. Any fax received after 5:00 p.m. Eastern time is stamped as “filed” the **NEXT** business day.

WHAT MUST I SUBMIT WITH MY HEARING REQUEST?

You should file a hearing request (the OAH form or a short written statement that you want to file a hearing request), the Claims Examiner's Determination, all the pages you received with the Claims Examiner's Determination, and the envelope in which it was mailed to you. If you file in person, you will be given a copy of everything you file. OAH will accept your hearing request for filing even if you do not have the Determination. OAH will ask you to bring in the Determination, before a hearing is scheduled. Do **NOT** wait to get a copy of the Determination before you file your hearing request.

HOW LONG DO I HAVE TO FILE A HEARING REQUEST?

If DOES mailed the Determination to you, you must file your hearing request within 10 calendar days of the date DOES mailed it. The time runs from the date that DOES mailed the Determination to you, **NOT** the date that you actually received it. The mailing date is usually shown on the first page of the Determination. If DOES used the wrong address when it mailed the Determination to you, you must file a hearing request within 10 calendar days of the actual delivery to you of the Determination.

In general, if the postmark on the DOES envelope in which the Determination was mailed to you is different from the date on the first page of the Determination, then the 10 calendar days run from the postmark date.

If the 10 calendar day filing deadline falls on a Saturday, Sunday, or a legal holiday, the filing deadline is extended to the next business day.

If you are the claimant and you are appealing a decision, you **MUST** still continue to file claim forms with DOES.

WHAT HAPPENS TO MY HEARING REQUEST IF I AM LATE?

If your hearing request is late, your hearing request may be dismissed.

You will have the chance at the hearing to explain to an administrative law judge any circumstances that may be relevant to the timeliness of your request, such as a change in your mailing address or a postmark date on the DOES envelope different from the date on the Determination itself. Any documents relevant to the issue of timeliness should be submitted to OAH as required by the Scheduling Order.

If you have lost your Claims Examiner's Determination, or you think it may have been lost in the mail, file your hearing request immediately and obtain a copy of the Determination from DOES as soon as possible.

WHEN WILL MY HEARING BE HELD?

Your hearing date will probably be two to three weeks after you file your hearing request. OAH mails out Scheduling Orders about 14 days before the hearing. You will receive a Scheduling Order in the mail at the address you provided to OAH.

CAN I CHANGE MY HEARING DATE?

OAH prefers not to change a hearing date because of the many hearings that have to be scheduled. If you want to change the hearing date, you must first try to contact the other side to see if the other side will agree to the change. Even if the other side does not agree or if you cannot reach the other side, you can still request a change. OAH has a form you may use for the request.

You must tell the court in writing:

- the reasons why you want to change the hearing date and,
- the efforts you made to contact the other side.

Do not wait until the last minute to request a postponement. You must send a copy of your request to the other side as well as OAH. The judge assigned to your case will consider your request. If you have not received an order granting your request, you should assume it has not been granted and you should appear for the scheduled hearing date.

CAN I PARTICIPATE IN THE HEARING ON THE TELEPHONE? CAN MY WITNESSES?

Parties and witnesses may participate by telephone, but only if there is a good reason why they cannot appear in person. Living or working outside the greater Washington metropolitan area may be considered a good reason. Representatives and attorneys are usually required to appear in person.

OAH prefers not to allow people to participate by telephone because of the difficulties it causes during a hearing. If you would like to request to participate by telephone, you must first try to contact the other side to see if the other side will agree to your appearing by telephone. Even if the other side does not agree or you cannot reach the other side, you can still request a telephone appearance. OAH has a form you may use for the request.

You must tell the court in writing:

- the reasons why you need to appear by telephone and,
- the efforts you made to contact the other side.

Do not wait until the last minute to request a telephone hearing. You must send a copy of your request to the other side as well as OAH. The judge assigned to your case will consider your request. If you have not received an order granting your request, you should assume it has not been granted.

DO I HAVE A HEARING DATE?

If you have filed a hearing request at OAH and at least two weeks have passed and you have not received a Scheduling Order from OAH, you may call OAH at the number above and a Legal Assistant can check to see if a hearing date has been assigned.

CAN I GET FREE LEGAL ADVICE?

Information about getting free legal advice is provided with each Scheduling Order. Free legal advice is available for all parties and free representation during a hearing is available in certain cases. Call for advice or an appointment as soon as possible before your hearing.

- Claimants call 202-974-8150 Claimant Advocacy Program
- Employers call 202-638-6761 Employer Advocacy Program

There are also other free legal clinics, including legal clinics run by area law schools which may provide legal assistance.

DO I NEED AN ATTORNEY?

The parties are permitted, but not required, to have lawyers or other authorized persons represent them at the hearing. If a party is represented by an attorney, the attorney must file and serve a Notice of Appearance. The attorney must also review the OAH Rules for other requirements.

I RECEIVED AN ORDER FOR MORE INFORMATION OR TO SHOW CAUSE. WHAT DOES IT MEAN?

An Order for More Information or Order to Show Cause is mailed when OAH does not have all the information necessary to start your case or schedule a hearing for you. If you are not able to provide the information that is requested, tell OAH in writing what you cannot obtain and why. **YOU MUST RESPOND TO THESE ORDERS.** Once the information is provided, a judge will decide whether there is a basis upon which a hearing can be scheduled.

THE SCHEDULING ORDER SAYS I HAVE TO SEND A LIST OF WITNESSES AND COPIES OF ANY DOCUMENTS I WANT TO USE TO OAH AND THE OTHER SIDE BEFORE THE HEARING? WHAT HAPPENS IF I DO NOT?

The judge's decision is based only on documents and testimony presented at the hearing. The judge will not have any documents or witness names you may have provided previously to DOES. You must give the documents and witness names you want to use to OAH and to the other side. If you do not comply with this requirement, the judge may exclude your witnesses or documents. OAH asks both parties to do this so that neither side is surprised by what happens at the hearing and so that documents may be labeled as exhibits prior to the hearing.

CAN I REQUIRE WITNESSES TO COME TO THE HEARING TO TESTIFY?

Yes, if you ask someone to appear as a witness and that person refuses, you may request that the judge issue a subpoena that requires the witness to come to the hearing. A request for a subpoena must explain why the testimony of the witness is important to your case and that the witness will not appear willingly. The request must be in writing and filed with OAH as soon as possible, but no later than three business days **BEFORE** the hearing. If the request is granted, you will be asked to fill out subpoena forms and you will be responsible for delivering the subpoena to the witness.

You have the same right to request a subpoena to require someone to produce written documents.

CAN I GET AN INTERPRETER FOR THE HEARING?

Both foreign language and sign language interpretation is available for people coming to the OAH office, calling the office or participating in the hearings. Interpreting services are available for such languages as Spanish, Korean, Cantonese, Mandarin, Vietnamese, Amharic and others. Please contact us prior to the hearing to ensure the availability of an appropriate translator.

Persons using text telephones or Telebraille may contact OAH via the Relay service by dialing 711 or (800) 643-3768.

The OAH facilities are wheelchair accessible.

WHAT WILL HAPPEN AT THE HEARING?

Please arrive for the hearing a few minutes before it is scheduled to begin. Sign in when you arrive in the OAH offices. If you do not appear, the hearing will start without you. You may lose the case if you do not appear, even if the other side does not appear.

An administrative law judge will preside at the hearing and carefully control the proceedings. You should be prepared to present your case to the administrative law judge at the hearing because only evidence presented at the hearing will be considered by the administrative law judge in making a decision. Any witnesses will testify after swearing or affirming to tell the truth. Each side will have the chance to ask the other side questions. If you have questions about how the hearing will be conducted, the administrative law judge will answer them at the hearing.

The presiding administrative law judge will require any evidence presented to be reasonably reliable and helpful in resolving the case, otherwise the evidence will not be permitted. A digital sound recording will be made of the entire hearing which can be purchased by contacting the OAH Clerk's Office.

I HAD A HEARING, HAS THE JUDGE ISSUED AN ORDER?

Final Orders are mailed to each party and to DOES. Be sure to advise OAH if your address changes. After three weeks, you may call OAH to ask whether a Final Order has issued. OAH attempts to meet the U. S. Department of Labor guideline of issuing 60 percent of its Final Orders within 30 days of the date a party files a hearing request.

CAN I WITHDRAW MY HEARING REQUEST?

If you are the party who originally filed the hearing request, you may withdraw the hearing request by notifying the court in writing of your wish to do so. Only the party who originally filed the hearing request can withdraw it.

I AM A CLAIMANT AND I WON MY CASE, WHEN WILL I GET MY FIRST CHECK?

DOES processes unemployment insurance benefits. OAH provides the Final Orders to DOES at the same time the Final Orders are mailed to the parties. You may contact DOES at 202-698-3700.

I DISAGREE WITH THE FINAL ORDER FROM THE JUDGE. WHAT CAN I DO ABOUT IT?

If you wish to appeal the Final Order, you have 30 calendar days from the date that it is mailed to you to file an appeal with the District of Columbia Court of Appeals. The process for doing that is described in the Final Order, on a separate page called "Petition for Review."

Under certain circumstances, you may request that the presiding administrative law judge reconsider the decision and consider new evidence or law that was not available at the time of the hearing. A request for reconsideration must be filed within 15 days of the mailing date of the Final Order.

If I have questions about this notice, or about OAH procedures, who can I contact?

You may call the OAH Clerk's office at (202) 442-8167. You may also read the procedural rules, which are available for copying and inspection at OAH during business hours, as well as at www.oah.dc.gov.

NOTE:

This information is provided as a service to assist parties in learning more about the hearing process at OAH, and it is not intended to serve as legal advice. It deliberately avoids use of precise legal terminology to increase its comprehensibility. A more detailed and precise statement of procedures can be found in 1 DCMR Chapters 28 and 29, which are available for copying and inspection at OAH during business hours, at libraries in the District of Columbia, as well as at www.oah.dc.gov.